

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

<i>Customer No.</i>	67292	}	
		}	
<i>Patent No.:</i>	7,273,749	}	
		}	
<i>Invention:</i>	Container for Carrying Out and Monitoring Biological Processes	}	ELECTRONICALLY FILED ON:
		}	
<i>Inventor:</i>	Carl T. Wittwer, et al.	}	<u>March 9, 2010</u>
		}	
<i>Issued:</i>	September 25, 2007	}	
		}	
<i>Attorney Docket:</i>	43387-66667	}	

TRANSMITTAL OF CERTIFICATE OF CORRECTION

Certificate of Correction Branch

Director for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

It is respectfully requested that a Certificate of Correction be issued in accordance with the enclosed Form PTO-1050 for Patent No. 7,273,749 pursuant to 35 U.S.C. § 254 and 37 C.F.R. § 1.322. Applicants note that the patent term adjustment (PTA) found on page 1 of the patent is incorrect according to the United States Court of Appeals for the Federal Circuit's decision in *Wyeth v. Kappos*, No. 2009-1120 (Fed. Cir. Jan. 7, 2010).

According to 37 C.F.R. § 1.322, a patentee or patentee's assignee may request the Director to issue a Certificate of Correction to correct an error in a patent. In part, the pertinent statute provides that

[w]henever a mistake in a patent, incurred through the fault of the Patent and Trademark Office, is clearly disclosed by the records of the Office, the Director may issue a certificate of correction stating the fact and nature of

such mistake, under seal, without charge, to be recorded in the records of patents.

35 U.S.C. § 254.

Patentees believe that the PTA as displayed on page 1 of the instant patent is a mistake that justifies issuance of a Certificate of Correction by the Director. Pursuant to the decision rendered in *Wyeth v. Kappos*, a patentee is entitled to PTA credit for examination delay under 37 C.F.R. § 1.702(a) in addition to any examination delay under 37 C.F.R. § 1.702(b), to the extent that the two periods of delay do not occur on the same calendar day or days. For the instant patent, the records of the U.S. Patent and Trademark Office (USPTO) clearly disclose that the patent is entitled to 1145 days of PTA instead of 801 days as incorrectly calculated by the USPTO. The correctly calculated PTA (i.e., 1145 days) was determined according to the grounds for adjustment under 37 C.F.R. § 1.702(a) and 37 C.F.R. § 1.702(b) and was calculated according to the periods of adjustment under 37 C.F.R. § 1.703(a) and 37 C.F.R. § 1.703(b). Furthermore, the correctly calculated PTA is established according to the recent decision by the U.S. Court of Appeals for the Federal Circuit in *Wyeth v. Kappos*, No. 2009-1120 (Fed. Cir. Jan. 7, 2010). A summary of the correctly calculated PTA is below.

	Relevant Dates	Period of Adjustment
Examination Delay under 37 C.F.R. § 1.702(a)	<i>37 C.F.R. § 1.703(a)(1)</i> Filing date of patent application: <u>August 3, 2000</u> Fourteen months after filing date of patent application: <u>October 3, 2001</u> First Action mailed: <u>February 13, 2004</u>	Difference for which patentee should receive credit: <u>+863 days</u>

US Patent No: 7,273,749
Request for Cert. of Correction

Examination Delay under 37 C.F.R. § 1.702(a)	<p><i>37 C.F.R. § 1.703(a)(6)</i></p> <p>Payment of issue fee: <u>May 4, 2007</u></p> <p>Four months after date of issue fee payment: <u>September 4, 2007</u></p> <p>Date of patent issue: <u>September 25, 2007</u></p>	Difference for which patentee should receive credit: <u>+21 days</u>
Examination Delay under 37 C.F.R. § 1.702(b)	<p><i>37 C.F.R. § 1.703(b)</i></p> <p>Filing date of patent application: <u>August 3, 2000</u></p> <p>Three years after filing date of patent application: <u>August 3, 2003</u></p> <p>Filing of RCE by Applicant: <u>January 14, 2005</u></p>	Difference for which patentee should receive credit: <u>+ 530 days</u> , the period beginning three years after the filing date and ending on the date of filing of an RCE by Applicant pursuant to 37 C.F.R. § 1.702(b)(1)
Circumstances under 37 C.F.R. § 1.704(b)	<p><i>37 C.F.R. § 1.704(b)</i></p> <p>Office Action mailed by USPTO: <u>February 13, 2004</u></p> <p>Three-Month Response Date: <u>May 13, 2004</u></p> <p>Response filed in the USPTO: <u>May 13, 2004</u></p>	Difference for which §1.702 period of adjustment should be reduced: <u>0 days</u>
Circumstances under 37 C.F.R. § 1.704(b)	<p><i>37 C.F.R. § 1.704(b)</i></p> <p>Office Action mailed by USPTO: <u>August 11, 2004</u></p> <p>Three-month Response date: <u>November 11, 2004</u></p> <p>Response/RCE filed in the USPTO: <u>January 11, 2005</u></p>	Difference for which §1.702 period of adjustment should be reduced: <u>-61 days</u>

US Patent No: 7,273,749
Request for Cert. of Correction

Circumstances under 37 C.F.R. § 1.704(b)	<p><i>37 C.F.R. § 1.704(c)(7)</i></p> <p>Filing of a Noncompliant Response:</p> <p>Response initially received by the USPTO: <u>May 31, 2005</u></p> <p>Corrected Response filed in the USPTO: <u>June 13, 2005</u></p>	Difference for which §1.702 period of adjustment should be reduced: <u>-13 days</u>
Circumstances under 37 C.F.R. § 1.704(b)	<p><i>37 C.F.R. § 1.704(c)(10)</i></p> <p>Submission of other paper after notice of allowance:</p> <p>Information Disclosure Statement filed in the USPTO: <u>July 17, 2007</u></p> <p>USPTO notice in response to submission: <u>July 18, 2007</u></p>	Difference for which §1.702 period of adjustment should be reduced: <u>-1 days</u>
Circumstances under 35 U.S.C. § 154(b)	<p>35 U.S.C. § 154(b)(2)(A)</p> <p>Start date of accumulated “B Delay” (three years after filing date of patent application): <u>August 3, 2003</u></p> <p>End date of accumulated “A Delay” (First Action mailed): <u>February 13, 2004</u></p>	Difference for which §1.702 period of adjustment should be reduced: <u>-194 days</u>
Total		<u>1145 days</u>

The mistake in PTA calculation for the instant patent was incurred through the fault of the USPTO. As held in *Wyeth v. Kappos*, the USPTO’s prior interpretation of 35 U.S.C. 154(b) resulted in an incorrect determination of PTA for many issued patents. The USPTO’s erroneous prior application of PTA calculations directly resulted in the incorrect PTA determination for the instant patent.

US Patent No: 7,273,749
Request for Cert. of Correction

Accordingly, the Patentee of the above-identified patent is entitled to a credit for the sum of 884 days under 37 C.F.R. § 1.702(a) and 530 days under 37 C.F.R. § 1.702(b), for a total of 1414 days, subject to a reduction of 75 days under 37 C.F.R. § 1.704 and a reduction of 194 days due to “overlap” of periods of delay under 35 U.S.C. § 154(b)(2)(A). Thus, the Patentee respectfully submits the total PTA is 1145 days and, in light of the Federal Circuit’s decision in *Wyeth v. Kappos*, request that the Director issue a Certificate of Correction stating the fact and nature of such mistake to be recorded in the records of patents.

As this mistake was incurred through the fault of the USPTO, the Patentee believes that no fees are required with the filing of this request for Certificate of Correction. However, if fees are required, the Director is hereby authorized to charge any defect or deficiency in fees or credit any overpayment to Deposit Account No. 10-0435 with reference to our Matter Number 43387-66667. Please send the Certificate of Correction to the undersigned attorney for the Patentees.

Respectfully submitted,

/Eric E. Williams/
Eric E. Williams
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EEW/glt
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